

1 SB259  
2 127440-1  
3 By Senators Brewbaker and Beasley  
4 RFD: Judiciary  
5 First Read: 24-MAR-11

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8 SYNOPSIS: This bill would allow judges upon a verdict  
9 or plea of guilty by a first time felony defendant  
10 charged with a crime other than capital murder, a  
11 Class A or B felony, a sex offense, or a Class C  
12 felony involving injury to a person, to defer  
13 further proceedings and place the defendant on  
14 probation as otherwise provided by law or sentence  
15 the defendant to a period of confinement not to  
16 exceed three years in a prison, jail-type, or  
17 treatment institution.

18 This bill would provide that if the  
19 defendant successfully completes the terms of  
20 probation, including any term of confinement  
21 ordered by the court, the defendant's case would be  
22 discharged and his or her criminal record would be  
23 sealed.

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25 A BILL  
26 TO BE ENTITLED  
27 AN ACT

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To establish the "First Time Felony Offender Act";  
to allow certain defendants without a prior felony conviction  
or youthful offender adjudication to apply for special status  
as a first offender; and to provide that if a first offender  
status is granted to a defendant by the sentencing judge, and  
he or she successfully completes the terms of probation,  
including any term of confinement ordered by the court, the  
defendant's case would be discharged and his or her criminal  
record would be sealed.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. (a) A person charged with a crime, other  
than capital murder, a Class A or B felony, a sex offense, or  
a Class C felony involving injury to a person, committed after  
he or she reaches the age of majority which involves moral  
turpitude or is subject to a sentence of commitment for one  
year or more who has no previous felony conviction or youthful  
offender adjudication may be investigated and examined by the  
court to determine whether he or she should be tried as a  
first offender, provided he or she consents to such  
examination and to trial without a jury where trial by jury  
would otherwise be available to him or her. If the defendant  
consents and the court so decides, no further action shall be  
taken on the complaint, indictment, or information unless  
otherwise ordered by the court as provided in subsection (b).

(b) After an investigation and examination conducted  
under subsection (a), the court, upon taking into

1 consideration the nature of the offense, may do either of the  
2 following:

3 (1) Direct that the defendant be arraigned as a  
4 first offender and that no further action be taken on the  
5 complaint, indictment, or information.

6 (2) Decide that the defendant shall not be arraigned  
7 as a first offender, whereupon the complaint, indictment, or  
8 information shall be deemed filed.

9 (c) Any offender who has been previously adjudicated  
10 as a youthful offender may not be considered as a first  
11 offender under this act.

12 Section 2. It shall be the duty of all probation  
13 officers of the State of Alabama to make such investigations  
14 for the court as requested by the court for the purpose of  
15 determining whether or not the person shall be charged as a  
16 first offender.

17 Section 3. The trial of first offenders and  
18 proceedings involving them shall be conducted at court  
19 sessions separate from those for other defendants charged with  
20 a crime.

21 Section 4. If a defendant does not plead guilty, the  
22 trial of the charge as a first offender shall be before the  
23 judge without a jury.

24 Section 5. No statement, admission, or confession  
25 made by a defendant to the court or to any officer thereof  
26 during the examination and investigation referred to in  
27 Section 1 shall be admissible as evidence against him or her

1 or his or her interest. Notwithstanding the foregoing, the  
2 court may take such statement, admission, or confession into  
3 consideration at the time of sentencing after the defendant  
4 has been found guilty of a crime or adjudged a first offender.

5 Section 6. (a) If a person is adjudged a first  
6 offender and the underlying charge is a felony, the court  
7 shall do any of the following:

8 (1) Suspend the imposition or execution of a  
9 sentence with or without probation.

10 (2) Place the defendant on probation for a period  
11 not to exceed three years.

12 (3) Impose a fine as provided by law for the offense  
13 with or without probation or commitment.

14 (4) Commit the defendant to the custody of the  
15 county jail or Department of Corrections for a term of three  
16 years or less.

17 (b) Where a sentence of fine is not otherwise  
18 authorized by law, then, in lieu of or in addition to any of  
19 the dispositions authorized in this section, the court may  
20 impose a fine of not more than seven thousand five hundred  
21 dollars (\$7,500). In imposing a fine, the court may authorize  
22 its payment in installments.

23 (c) In placing a defendant on probation, the court  
24 shall direct that he or she be placed under the supervision of  
25 the appropriate probation or community corrections agency.

26 (d) If the underlying charge is a misdemeanor, a  
27 person adjudged a first offender may be sentenced as otherwise

1 provided by law for such misdemeanor. Where a sentence of fine  
2 is not otherwise authorized by law, then, in lieu of or in  
3 addition to any of the dispositions authorized by law, the  
4 court may impose a fine of not more than three thousand  
5 dollars (\$3,000). In imposing a fine, the court may authorize  
6 its payment in installments.

7 Section 7. (a) No determination made under this act  
8 shall disqualify any first offender for public office or  
9 public employment, operate as a forfeiture of any right or  
10 privilege, or make him or her ineligible to receive any  
11 license granted by public authority.

12 (b) The fingerprints and photographs and other  
13 records of a person adjudged a first offender shall not be  
14 open to public inspection unless the court permits the  
15 inspection of the papers or records.

16 (c) The Alabama Sentencing Commission shall have  
17 access to all case information pertaining to first offender  
18 adjudications for data analysis purposes.

19 Section 8. This act shall become effective on the  
20 first day of the third month following its passage and  
21 approval by the Governor, or its otherwise becoming law.